IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6059 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAK @ DILIP PANKAJBHAI PATIL

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UDAY BHATT, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on May 29, 2000, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Dipak alias Dilip Pankajbhai

Patil under the provisions of the said Act.

2. The detaining authority took into consideration four offences registered against the petitioner under the Bombay Prohibition Act, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Mishra, learned advocate appearing for the petitioner, has restricted her arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. She has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on the 28th May, 2000 and the order detention was passed on the 29th May, 2000. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu.

3.1 So far as the registered offence is considered, it is contended by Ms. Mishra that by representation dated the 16th June, 2000, certain documents were demanded by the detenu from the State Government. The said representation is rejected by the State Government on June 22, 2000. This non-supply of document has resulted into infringement of the right of the detenu of making an effective representation under Article 22(5) of the Constitution and his continued detention, therefore, is bad in law. She, therefore, submitted that the petition may be allowed. In support of his contention, he has placed on record a copy of the communication received by the detenu rejecting the representation.

4. Mr. Uday Bhatt, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on May 27, 2000. The same have been verified by the detaining authority on May 28, 2000 and the order is passed on May 29, 2000. So far as the statements of anonymous witnesses are concerned, it may be noted that

the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. Adverting to the offence registered against the detenu, by a representation dated the 16th June, 2000, certain documents were demanded by the detenu. However, the said representation came to be rejected by the State Government on the 22nd June, 2000. Mr. Bhatt, upon instructions, has conceded to this factual aspect. Thus, the non-supply of the documents has resulted into infringement of the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. Therefore, the continued detention of the detenu is bad and the petition deserves to be allowed on this ground also.

7. In the result, the petition is allowed. The impugned order of detention dated May 29, 2000, passed against the detenu is hereby quashed. The detenu-Dipak alias Dilip Pankajbhai Patil is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt